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RUEHNE/AMEMBASSY NEW DELHI PRIORITY 2047
RUEHNY/AMEMBASSY OSLO PRIORITY 4392
RUEHKO/AMEMBASSY TOKYO PRIORITY 3487
RUEHCG/AMCONSUL CHENNAI PRIORITY 8503
RUEHBI/AMCONSUL MUMBAI PRIORITY 5952
RUEHON/AMCONSUL TORONTO PRIORITY 0658
RUEHGV/USMISSION GENEVA PRIORITY 2783
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RHEFDIA/DIA WASHINGTON DC PRIORITY
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY
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C O N F I D E N T I A L SECTION 01 OF 03 COLOMBO 000493

SIPDIS

DEPARTMENT FOR SCA/INS

E.O. 12958: DECL: 05/21/2018

TAGS: [PGOV](#) [PREL](#) [PTER](#) [PHUM](#) [MOPS](#) [CE](#)

SUBJECT: SRI LANKA: COMMISSION REQUESTS ASSISTANCE FOR
VIDEO TESTIMONY; DRAFT LEGISLATION THREATENS TO DERAIL
INQUIRY

REF: COLOMBO 409

Classified By: Ambassador Robert O. Blake, Jr., for reasons 1.4(b,d).

¶1. (C) SUMMARY: On May 6, Chairman of the Commission of Inquiry Udalagama formally requested assistance in continuing video conference testimony from abroad. Embassy and USAID have agreed that support of this effort would be the most appropriate use of unused U.S. funds which had been designated for the IIGEP secretariat. COI Chairman Udalagama recently has been vocal about resisting GSL interference with the COI and about GSL-imposed constraints on the Commission, including a lack of funds to hire independent counsel. Udalagama has dismissed criticism from private attorneys representing the Army and Special Task Force over the COI's recent meetings with Western diplomats, including the U.S. Ambassador, saying the meetings merely concerned logistical arrangements for video testimony. The three remaining IIGEP Assistants departed Colombo on May 14 to an undisclosed location, where they will continue their work of archiving IIGEP's data and remotely facilitating witness testimony via video teleconferencing. On May 20, DCM spoke with Human Rights Minister Mahinda Samarasinghe to express concern about provisions in the draft witness protection legislation that would undermine the concepts of witness protection and privacy. Samarasinghe said he was not aware of such provisions, but expected Parliament to take up the bill in early June and pass it quickly. Post is encouraged by the COI's apparent determination to proceed, but concerned that the witness protection bill, if passed as drafted, would effectively end witness testimony from abroad and bring the COI's work to a standstill. We are also concerned that the Government and its proxies, who are no doubt concerned that this testimony will further implicate Government security forces, may try to use the pretext of alleged international "interference" in the COI to close down the video-conferencing, if not the COI itself. End Summary.

COI Requests Funds for Video Testimonies

¶2. (C) On May 6, Chairman of the Commission of Inquiry, retired Supreme Court Justice, N.K. Udalagama, wrote to

former U.S. Eminent Person Gene Dewey formally requesting financial and logistical assistance in continuing video conference testimony from abroad. IIGEP donor heads of mission met on May 8 to discuss assistance and decided that donor countries would seek to tap remaining IIGEP secretariat funds to finance video testimony. The remaining IIGEP assistants agreed to continue to facilitate the video conferencing sessions. Embassy and USAID concurred that support of this effort would be the most appropriate use of unused U.S. funds dedicated to the support of IIGEP. On May 21, Udagama told local press that the cases involving the killing of 17 Action Contre la Faim workers and 5 youth in Trincomalee were "on the verge of ending in smoke for want of evidence." He welcomed assistance from the diplomatic community, including the U.S., EU and Canada, which would allow work on these cases to continue.

COI Chairman Resists GSL Pressure

13. (C) COI Chairman Udagama recently has made forthright statements about resisting GSL interference with the COI and about GSL-imposed constraints on the Commission. He told BBC news on May 19 that the GSL's Presidential Secretariat has not provided funds to hire independent counsel. The government has long argued, however, that the COI's independence was not compromised by the presence of government lawyers because the COI also had a team of independent counsel. Without funding, the COI must rely solely on government lawyers, calling in to question the

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independence of the Commission.

14. (U) Udagama has resisted calls from the government to replace Commissioner Dr. D. Nesiah for maintaining an affiliation with the think-tank Centre for Policy Alternatives. Udagama told local press on May 13 that Nesiah can resign if he wishes, but the Commission has no powers to remove him.

15. (U) The prominent private attorneys representing the Army and Special Task Force recently criticized the COI for holding meetings with Western diplomats, including the U.S. Ambassador, saying the meetings "deprive the Commission of credibility." (Note: The source of funding for the private lawyers representing the Sri Lankan security forces in the Commission hearings remains unclear.) In response, the COI published a statement noting that the COI meets with diplomats from time to time, and that the most recent meeting concerned logistical matters relating to video conferencing.

Last Assistants Depart

16. (C) The three remaining IIGEP Assistants, including U.S.-funded witness protection expert David Savage, departed Colombo on May 14 to an undisclosed location. Over the next several weeks, they will continue their work of archiving IIGEP's data, including sensitive witness testimony, and remotely facilitating witness testimony to the Commission of Inquiry via video teleconferencing.

Witness Protection Bill To Endanger Future Testimony

17. (C) On May 20, DCM spoke with Human Rights Minister Mahinda Samarasinghe regarding the pending witness protection bill. DCM expressed concern about reports from Embassy contacts that the current draft of the bill contains a provision stipulating that the Attorney General or one of his representatives must be present with witnesses when they are questioned outside the country. DCM emphasized that this would completely undermine the concept of witness protection and privacy. Samarasinghe acknowledged that this would constitute "intimidation." He said he was not aware of such a

provision, but would check with his staff. Samarasinghe said he had heard that, in keeping with "international best practices," the draft legislation did require that the Foreign Ministry of the country where the testimony was being made and the Sri Lankan Embassy there "coordinate to ensure that witnesses are not pressured or coached." He said he believed that representatives of neither the host government MFA nor the Sri Lankan Embassy would be allowed in the room where the testimony was taking place. (Note: this would betray - at a minimum - the country of refuge of witnesses to the Sri Lankan authorities, thereby undermining the basis of protection of these witnesses.)

18. (C) Samarasinghe said the bill will be taken up in Parliament when it reconvenes, probably as early as June 6 or 17. He predicted the legislation would be passed quickly, probably the same day it is presented. He noted that the Supreme Court has examined the bill for its constitutionality. If the Court suggested any changes, these would be read in Parliament when the bill is presented and the drafters would make adjustments accordingly. The revised legislation would then be taken to committee, where the amendments would be approved. Samarasinghe said this could all be done in one day. He said it was urgent to proceed because witness protection bill legislation has been delayed "too long."

19. (C) COMMENT: Post is encouraged by the COI's apparent determination to proceed and willingness to seek assistance

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from the diplomatic community. We believe continuing video testimony is the only chance the COI has of succeeding in resolving any of the cases in its mandate. We will maintain contact with Savage and the other assistants and closely follow their progress on wrapping up IIGEP's work and setting up video testimony. However, the witness protection bill, if passed as drafted, would effectively end witness testimony from abroad and bring the COI's work to a standstill. Post will urge the GSL to reconsider passing such legislation.

110. (C) COMMENT CONTINUED: The steady drumbeat of criticism by the private lawyers representing the Army and STF of the COI for its meeting with the U.S. and Canadian ambassadors and the EU DCTI may presage an effort to end at least the video-conferencing of witnesses if not the COI itself. Justice Udalgama has responded forthrightly that the meeting was only to discuss technical matters related to continuing the video-conferencing from abroad. However, the Government and its proxies, who are no doubt concerned that this testimony will further implicate Government security forces, may try to use the pretext of alleged international "interference" in the COI to closedown the video-conferencing and the COI.
BLAKE